

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

SODJINE PAUL ANATO and SARAH
ANATO,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF AGRICULTURE, RURAL
DEVELOPMENT,

Defendant.

CV-17-28-GF-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE’S FINDINGS AND
RECOMMENDATIONS**

Defendant United States Department of Agriculture, Rural Development (“USDA”) filed a motion to dismiss for lack of subject matter jurisdiction, insufficient service of process, and failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(1), (5), and (6). (Doc. 25.) Plaintiffs Sodjine Paul Anato and Sarah Anato (collectively “Plaintiffs”) did not file a response brief, which was due on June 13, 2018. United States Magistrate Judge John Johnston issued Findings and Recommendations in this matter on August 2, 2018. (Doc. 28.) Judge Johnston recommended that the Court grant USDA’s motion to dismiss. (Doc. 28 at 4.) Judge Johnston further recommended that the Plaintiffs’ claim be dismissed without prejudice. (Doc. 28 at 5.)

Objections to Judge Johnston’s Findings and Recommendations were due on August 16, 2018. Neither party filed objections. The Court reviews findings and

recommendations not objected to for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Plaintiffs filed a petition with the Ninth Circuit Court of Appeals seeking review of an order issued by the United States Department of Agriculture's National Appeals Division. (Doc. 1.) The Ninth Circuit denied review on March 14, 2017. (Doc. 1.) Plaintiff's petition subsequently was transferred to the Court. (Doc. 1.) Plaintiff's petition asks the Court to review the National Appeals Division's order on Plaintiff's motion to reconsider allowing the USDA to foreclose on Plaintiff's November 2, 2016, home mortgage. (Doc. 2.) USDA filed a motion to dismiss pursuant to Rule 12(b)(1), (5), and (6). (Doc. 6 at 1.) If service of process was accomplished, however, USDA alternatively filed a motion for a more definite statement pursuant to Rule 12(e). (Doc. 6 at 1-2.) Plaintiffs filed a response to USDA's motion to dismiss on January 2, 2018. (Doc. 14.)

Plaintiffs also filed a complaint on January 2, 2018. (Doc. 15.) Plaintiffs alleged five causes of action: 1) failure to remedy a wrong, 2) violation of the Fifth Amendment, 3) creation of a policy, 4) violation of the Eighth Amendment, and 5) negligent infliction of emotional distress. (Doc. 15.) Judge Johnston issued Findings and Recommendations (Doc. 21) on USDA's motion to dismiss on April 18, 2018, which were adopted (Doc. 27) by the Court on July 18, 2018.

USDA filed a motion to dismiss Plaintiffs' complaint on May 23, 2018. (Doc. 25.) USDA first alleged it is not the proper party for Plaintiff's tort claims. (Doc. 26 at 2.) USDA then alleged that the government has not waived sovereign immunity regarding Plaintiffs' Section 1983 claims. (Doc. 26 at 4.) USDA further alleged that all of Plaintiffs' constitutional claims are barred by res judicata because those claims were adjudicated and dismissed by the Court. (Doc. 26 at 5-6.) Accordingly, USDA requests the Court dismiss Plaintiffs' complaint against USDA for lack of subject matter jurisdiction and for failure to state a claim. (Doc. 26 at 8.) USDA, however, does not object to Plaintiffs being allowed to re-file their complaint naming the United States, the proper party pursuant to the Federal Tort Claims Act. (Doc. 26 at 9.) Plaintiffs have yet to file a response to USDA's motion to dismiss.

Judge Johnston recommends Plaintiffs' complaint be dismissed without prejudice. (Doc. 28 at 5.)

The District of Montana's Local Rule 7.1(d)(1)(B)(i) provides, in relevant part, that "responses to motions to dismiss ... must be filed within 21 days after the motion was filed." USDA filed a motion to dismiss on May 23, 2018. (Doc. 25.) Nothing in the record indicates that Plaintiffs have filed a response within the required time. The Court finds no error in Judge Johnston's Findings and Recommendations and adopts them in full.

ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 28) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that Defendant's motion to dismiss (Doc. 25) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs' complaint is **DISMISSED WITHOUT PREJUDICE**.

DATED this 29th day of August, 2018.



Brian Morris
United States District Court Judge